

Case No.

90-706

NOV 27 1990

JOSEPH F. SPANIOL, JR.
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1990

ENID R. BRAHMS, Petitioner,

v.

MICHAEL ALAN SCHWARTZ, Grievance
Administrator, State of Michigan
Attorney Grievance Commission,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
MICHIGAN SUPREME COURT

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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Attorney for Respondent



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IDENTIFICATION OF PARTIES

Petitioner, Enid R. Brahms is a Michigan attorney, admitted to the Michigan Bar on May 26, 1982.

The Respondent is the prosecutorial arm of the Michigan Supreme Court relative to the discharge of said Court's constitutional responsibility to supervise and discipline Michigan attorneys.

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RESPONDENT'S STATEMENT OF THE CASE

On May 25, 1988, Petitioner was charged in a Formal Complaint by the Michigan Attorney Grievance Commission with having neglected a legal matter that was entrusted to her. The disciplinary proceedings against the Petitioner were tried before a panel of three attorneys appointed to hear such matters by the State of Michigan, Attorney Discipline Board. At the trial, Petitioner's client, Mr. Tommy Patrick, testified that he sought the legal services of Petitioner on December 17, 1985, to represent him in a lawsuit against the United Auto Workers. Mr. Patrick testified that

the Petitioner agreed to represent him, and that he had never been informed by the Petitioner that she would not handle this legal matter for him. (Hearing Transcript, September 6, 1988, pages 18-19, hereinafter referred to HT 18-19). The Petitioner gave Mr. Patrick a clear impression that she was would pursue the legal matter on his behalf. (HT. 40)

Mr. Patrick testified further that he had never informed the Petitioner that he did not wish to proceed with litigation against Chrysler Corporation, nor had he ever heard his wife so inform the Petitioner. (HT. 41). When questioned as to what he

thought the Petitioner was doing on his legal matter, between the initial meeting on December 17, 1985, and the time he filed his Request for Investigation with the State of Michigan, Attorney Grievance Commission on December 2, 1987, Mr. Patrick testified that "I thought she was trying to get some information. Every time I called her, she was telling me she was working on it. That's what she said." (HT. 57, lines 19-22). The evidence disclosed that no action was taken by the Petitioner in relation to Mr. Patrick's case during that time.

Petitioner's testimony was substantially different from that of Mr. Patrick. Petitioner

testified that she had informed Mr. Patrick, at the initial meeting, that she would not sue a union. (HT.8). Petitioner also testified that her representation of Mr. Patrick ended shortly after the initial meeting in December 1985, after she had been informed by Mr. Patrick's wife that the Patricks did not wish her to commence litigation against Chrysler Corporation. (HT. 71-72). Petitioner admitted that she had never advised her client in writing that her representation had ended and that there was nothing further for her to do. (HT. 79). The Hearing Panel determined that the Petitioner had been retained by Mr.

Patrick to represent him in an employment rights matter in December 1985, but performed no further services on her client's behalf after January 1986, and failed to advise her client that she would take no further action on his behalf. The Hearing Panel concluded that the Petitioner's conduct constituted professional misconduct warranting a reprimand. The Petitioner did not raise any federal question at any stage in the proceedings before the Hearing Panel.

On December 22, 1988, Petitioner, filed a Petition For Review of the Hearing Panel's Order to the State of Michigan, Attorney Discipline Board.

The Petitioner did not raise any federal question in her Petition For Review or in her Brief In Support Of Petition For Review. In an order dated July 3, 1989, the Attorney Discipline Board affirmed the Hearing Panel's finding that the Petitioner had engaged in professional misconduct. On August 24, 1989, the Petitioner filed a Motion For Reconsideration with the State of Michigan Attorney Discipline Board, wherein she asserted approximately forty-six new grounds for reversal of the decision in the case.

The Attorney Discipline Board denied Petitioner's Motion For Reconsideration, ruling that the record

contained sufficient evidentiary support for the findings and conclusions of the Hearing Panel. The Board further stated in its order that the Petitioner, had failed to establish a denial of due process in the proceedings. Petitioner filed an Application For Leave To Appeal with the Michigan Supreme Court, but the Supreme Court Clerk's Office advised the Petitioner that her application was not timely filed. Subsequently, Petitioner refiled the Application For Leave To Appeal. On May 22, 1990, the Michigan Supreme Court denied the Petitioner's "Delayed" Application For Leave To Appeal stating that they were

not persuaded that the questions presented should be reviewed by the court. The Petitioner then filed a Motion For Reconsideration in the Michigan Supreme Court which was also denied by order dated July 31, 1990.

SUMMARY OF ARGUMENT

Petitioner did not raise the presently alleged federal questions at the trial level before the hearing panel, nor did the Petitioner timely raise the federal questions during the first appellate stage before the State of Michigan Attorney Discipline Board. Petitioner's vague appeal to and

assertion of constitutional principles in the Michigan Supreme Court do not preserve her equal protection and due process claims.

ARGUMENT

Petitioner failed to properly raise and preserve any federal question at the trial before the Hearing Panel of the State of Michigan Attorney Discipline Board. Petitioner also failed to raise any federal questions, when she first presented her appeal of right, to the State of Michigan Attorney Discipline Board. After the Attorney Discipline Board affirmed the

decision of the Hearing Panel, Petitioner filed a Motion For Reconsideration.

In her Motion For Reconsideration, the Petitioner alleged forty-six reasons why the State of Michigan Attorney Discipline Board should reconsider its decision to affirm the decision of the Hearing Panel. The Petitioner merely recited that she was denied due process and equal protection of law without detailing any facts or legal authority. The Motion For Reconsideration simply alleged:

29. The statute and rules under which the Board and panel proceeded are unconstitutional.

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40. Respondent has been deprived of due process of law.

41. Respondent has been denied equal protection of the law. (Petitioner's Motion For Reconsideration, dated August 24, 1989).

The Petitioner then requested, and was granted, additional time by the State of Michigan Attorney Discipline Board, to file an Amended Motion For Reconsideration. On November 27, 1989, Petitioner filed her First Amended Motion For Reconsideration and Request For Oral Argument (hereinafter referred to as First Amended Motion-ADB). The First Amended Motion-ADB, contained seventy-six numbered paragraphs, where Petitioner again made a vague appeal to

constitutional principles. The pertinent paragraphs are as follows:

* * *

37. By the failure of Mrs. Patrick to be produced as a witness, Respondent was denied due process of law.

* * *

62. The statute and rules under which the Board and panel proceeded are unconstitutional.

* * *

70. Respondent has been deprived of due process of law. (First Amended Motion-ADB)

Petitioner also filed with the State of Michigan Attorney Discipline Board, her First Brief In Support Of Motion and a First Amended Brief In

Support Of Motion. The Petitioner failed to make any specific reference in either of these documents, to any particular federal statute or any portion of the Constitution upon which she was alleging her federal claim. The State of Michigan Attorney Discipline Board entered its Order Denying Respondent's Motion For Reconsideration on January 16, 1990, and it was determined that the Petitioner had failed to establish a denial of her due process rights.

In her Application For Leave To Appeal, filed with the Michigan Supreme Court, Petitioner again made vague references to alleged denial of her due

process rights. For the first time in these proceedings, Petitioner also alleged "failure on the part of the appellee or the Grievance Board to publish opinions constitutes a clear denial of due process and is in violation of the equal protection clause since with no specific guidelines, certain groups can be singled out for special treatment with respect to grievance procedures."

(Application For Leave To Appeal, page 17). However, Petitioner did not further delineate or explain her position.

The Michigan Supreme Court denied Petitioner's Application For Leave To

Appeal because they were not persuaded that the questions presented should be reviewed. Petitioner then filed a Motion For Reconsideration in the Michigan Supreme Court which was also denied.

In Banker's Life and Casualty Company v Crenshaw, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed. 2d 62 (1988) the appellant sought review from this Honorable Court, of the propriety of a punitive damage award entered against it in Mississippi State Courts, and in addition sought to challenge the constitutionality of a Mississippi penalty statute. The appellant had not raised any federal questions in the

state court proceedings, until such time as he filed a Petition For Rehearing with the Mississippi Supreme Court. In determining whether or not to grant certiorari, this Court noted that the appellant had merely alleged that the punitive damage award entered against it "was clearly excessive, and not reasonably related to any legitimate purpose, constitutes excessive fine, and violates constitutional principles." 486 U.S. at 77, 108 S.Ct. at 1650. This Court went on to state: "The vague appeal to constitutional principles does not preserve appellant's Contract Clause or due process claim. A party may not

preserve a constitutional challenge by generally invoking the Constitution in state court and awaiting review in this Court to specify the constitutional provision it is relying upon." 486 U.S. at 77, 108 S.Ct. at 1650.

In the case at bar, the Petitioner has made vague references to alleged violations of her due process and equal protection rights. No specific reference to any portion of the United States Constitution or any federal statute was raised in the state court proceedings. The Petitioner inadequately pleaded constitutional principles in her Motion For Reconsideration before the Michigan Supreme Court.

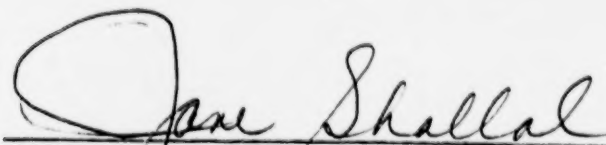
The Petitioner's vague allegations of and appeal to constitutional issues does not preserve her equal protection and due process claims. Banker's Life and Casualty Company, 108 S. Ct. at 1650.

CONCLUSION

For the foregoing reasons,
Respondent respectfully requests this
Honorable Court deny Petitioner's Writ
for Certiorari to the Michigan Supreme
Court.

Dated: Detroit, Michigan
November 27, 1990

FRANK J. GRECO
Acting Grievance Administrator
Michigan Attorney Grievance Commission

A handwritten signature in cursive script, appearing to read "Jane Shallal", is written over a horizontal line.

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